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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 300**

**[Docket No. 180417378-8379-01]**

**RIN 0648-BH89**

**Magnuson-Stevens Fishery Conservation and Management Act; Lifting the Stay on Inclusion of Shrimp and Abalone in the Seafood Traceability Program**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; compliance date and lift of stay.

**SUMMARY:** NMFS issued a final rule on December 9, 2016 to establish the Seafood Traceability Program, also known as the Seafood Import Monitoring Program or SIMP. Implementation of the Program for shrimp and abalone species was stayed indefinitely due to NMFS' determination that current data collection for shrimp and abalone aquacultured in the U.S. is not equivalent to the data that would have been required to be reported for imports of these products. The Consolidated Appropriations Act of 2018 directed the Secretary of Commerce, within 30 days of enactment of the Act, to lift the stay on the implementation of the Seafood Traceability Program with respect to shrimp and abalone. This rule informs the affected public of the effective and compliance dates for the reporting and recordkeeping requirements, applicable for imports of shrimp and abalone species originating from both wild capture fisheries and aquaculture operations.

**DATES:** *Effective date:* The stay on 50 CFR 300.324(a)(3) is lifted effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

*Compliance date:* The compliance date for this rule for the species included at 50 CFR 300.324(a)(3) is December 31, 2018.

**FOR FURTHER INFORMATION CONTACT:** Celeste Leroux at (301) 427-8372 or *Celeste.Leroux@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The Seafood Traceability Program (*see* 50 CFR 300.320-300.325) is the first phase of a risk-based traceability program, which establishes permit, reporting and recordkeeping requirements needed to prevent illegally harvested and misrepresented seafood from entering into U.S. Commerce. In the development of the Seafood Traceability Program rule, 13 “priority” species were identified as being most at risk for Illegal, Unreported, and Unregulated (IUU) fishing and misrepresentation, and are the only species currently subject to this program. For two of those species (abalone and shrimp), NMFS stayed program requirements indefinitely (50 CFR 300.324(a)(3)). *See* 81 FR 88975 (December 9, 2016). This rule lifts that stay, effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], and establishes a compliance date of December 31, 2018 for shrimp and abalone.

NMFS had stayed requirements for abalone and shrimp because gaps existed in the collection of traceability information for domestic aquaculture-raised shrimp and abalone, which is currently largely regulated at the state level. During development of the Seafood Traceability Program, NMFS explored the possibility of working with its state partners to establish reporting and recordkeeping requirements for aquaculture

traceability information that could be shared with NMFS. However, this did not prove to be a viable approach. *See* 81 FR at 88977-78. In the Seafood Import Monitoring Program final rule, NMFS explained that “[A]t such time that the domestic reporting and recordkeeping gaps have been closed, NMFS will then publish an action in the *Federal Register* to lift the stay of the effective date for § 300.324(a)(3) of the rule pertaining to shrimp and abalone. Adequate advance notice to the trade community would be provided” to ensure all affected parties have sufficient time to come into compliance.

On March 23, 2018, the Consolidated Appropriations Act of 2018 (Pub. L. 115-141) was signed by the President and became law. Section 539 of Division B of the Act directed the Secretary of Commerce to, within 30 days, lift the stay on the effective date of the final rule for the Seafood Traceability Program published by the Secretary on December 9, 2016, (81 FR 88975) for the species described in 50 CFR 300.324(a)(3), provided that the compliance date for the species described in 50 CFR 300.324(a)(3) shall occur not later than December 31, 2018. This rule implements the Act and provides that shrimp and abalone will be subject to the requirements of the Seafood Traceability Program under 50 CFR 300.324(a)(3) effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] with a compliance date December 31, 2018.

The Program consists of two components: (1) reporting of harvest events at the time of entry; and (2) permitting and recordkeeping requirements with respect to both harvest events and chain of custody information. *See* 50 CFR 300.324 and *id.* §§ 300.320-300.323 and 300.325. Application of the program’s reporting and recordkeeping

requirements to shrimp and abalone will enable audits of imports to be conducted to determine the origin of the products and confirm that they were lawfully acquired.

As of the December 31, 2018 compliance date established by this rule, importers of shrimp and abalone species will be required to obtain an International Fisheries Trade Permit as specified at 50 CFR 300.322, submit harvest and landing information on those products into the U.S. Customs and Border Protection International Trade Data System (ITDS) through the Automated Commercial Environment (ACE) portal prior to entry into U.S. Commerce, and maintain supply chain records from the point of harvest to the point of entry into U.S. Commerce for a period of two years after entry. International Fishery Trade Permits are currently available for issuance and it is anticipated that ACE reporting will be available for testing prior to the compliance date. Prior to December 31, 2018, NMFS will publish a notice in the Federal Register to inform interested parties that ACE programming has been completed to allow U.S. importers to test software for ACE entry reporting for shrimp and abalone. For products harvested prior to the compliance date, U.S. importers should work with their foreign suppliers to ensure that the harvest event and supply chain records are available for any entries made on or after December 31, 2018.

### **Domestic Aquaculture Rulemaking**

Section 539 of Title V of Division B of the Consolidated Appropriations Act of 2018 (Pub. L. 115-141) also directed the Secretary of Commerce to “...establish a traceability program for United States inland, coastal, and marine aquaculture of shrimp and abalone...” and by December 31, 2018 to “...promulgate such regulations as are necessary and appropriate to establish and implement the program.”

Concurrent with the work to develop import reporting mechanisms, NMFS will develop reporting and recordkeeping requirements for domestic aquaculture-raised shrimp and abalone.

### **Harmonized Tariff Schedule Codes**

The Harmonized Tariff Schedule (HTS) codes applicable to the products subject to the requirements of this rule may be revised from time to time by the International Trade Commission. Any such changes will be reflected in the NMFS Implementation Guides for ACE that are posted to the internet by the U.S. Customs and Border Patrol (CBP). Application of this rule to entries of fish and fish products filed under the following HTS codes will be mandatory as of December 31, 2018, when these shrimp and abalone HTS codes will be designated in ACE as requiring a complete Seafood Traceability Program data set in order to obtain release of the inbound shipment:

<i>HTS CODE</i>	<i>COMMODITY DESCRIPTION</i>
306160003	SHRIMP COLD-WATER SHELL-ON FROZEN < 15
306160006	SHRIMP COLD-WATER SHELL-ON FROZEN 15/20
306160009	SHRIMP COLD-WATER SHELL-ON FROZEN 21/25
306160012	SHRIMP COLD-WATER SHELL-ON FROZEN 26/30
306160015	SHRIMP COLD-WATER SHELL-ON FROZEN 31/40
306160018	SHRIMP COLD-WATER SHELL-ON FROZEN 41/50
306160021	SHRIMP COLD-WATER SHELL-ON FROZEN 51/60
306160024	SHRIMP COLD-WATER SHELL-ON FROZEN 61/70
306160027	SHRIMP COLD-WATER SHELL-ON FROZEN > 70

306160040	SHRIMP COLD-WATER PEELED FROZEN
306170003	SHRIMP WARM-WATER SHELL-ON FROZEN < 15
306170006	SHRIMP WARM-WATER SHELL-ON FROZEN 15/20
306170009	SHRIMP WARM-WATER SHELL-ON FROZEN 21/25
306170012	SHRIMP WARM-WATER SHELL-ON FROZEN 26/30
306170015	SHRIMP WARM-WATER SHELL-ON FROZEN 31/40
306170018	SHRIMP WARM-WATER SHELL-ON FROZEN 41/50
306170021	SHRIMP WARM-WATER SHELL-ON FROZEN 51/60
306170024	SHRIMP WARM-WATER SHELL-ON FROZEN 61/70
306170027	SHRIMP WARM-WATER SHELL-ON FROZEN > 70
306170040	SHRIMP WARM-WATER PEELED FROZEN
1605211000	SHRIMPS AND PRAWNS, NOT IN AIRTIGHT CONTAINERS
1605291010	SHRIMPS AND PRAWNS, FROZEN, IN AIRTIGHT CONTAINERS
1605291040	SHRIMPS AND PRAWNS, PREPARED OR PRESERVED, IN AIRTIGHT CONTAINERS, OTHERS
1605211020	SHRIMPS AND PRAWNS, BREADED, FROZEN
1605211030	SHRIMPS AND PRAWNS, PREPARED OTHERS, FROZEN
1605211050	SHRIMPS AND PRAWNS, PREPARED OR PRESERVED, NOT IN AIRTIGHT CONTAINERS, OTHERS
306350020	COLD-WATER SHRIMPS AND PRAWNS (PANDALUS SPP., CRANGON CRANGON), LIVE, FRESH OR CHILLED, SHELL-

	ON
306350040	COLD-WATER SHRIMPS AND PRAWNS (PANDALUS SPP., CRANGON CRANGON), FRESH OR CHILLED, PEELED
306360020	SHRIMPS AND PRAWNS, LIVE, FRESH OR CHILLED, SHELL-ON, OTHER THAN COLD-WATER
306360040	SHRIMPS AND PRAWNS, FRESH OR CHILLED, PEELED, OTHER THAN COLD-WATER
306950020	SHRIMPS AND PRAWNS, SHELL-ON, OTHERS
306950040	SHRIMPS AND PRAWNS, PEELED, OTHERS
1604200510	PREPARED MEALS CONTAINING MEAT OF CRUSTACEANS, MOLLUSCS OR OTHER AQUATIC INVERTEBRATES, OTHERS
1604200590	PRODUCTS CONTAINING MEAT OF CRUSTACEANS, MOLLUSCS OR OTHER AQUATIC INVERTEBRATES, OTHERS
1605210500	SHRIMP AND PRAWN PRODUCTS CONTAINING FISH MEAT; PREPARED MEALS NOT IN AIRTIGHT CONTAINERS
1605570500	ABALONE PRODUCTS PREPARED DINNERS
1605576000	ABALONE PREPARED/PRESERVED
307810000	LIVE, FRESH OR CHILLED ABALONE (HALIOTIS SPP.)
307830000	FROZEN ABALONE (HALIOTIS SPP.)
307870000	OTHER ABALONE (HALIOTIS SPP.)
307890000	ABALONE, NESOI
160557000	ABALONE (HALIOTIS SPP.), PREPARED OR PRESERVED

Highly processed fish products (fish oil, slurry, sauces, sticks, balls, cakes, puddings, and other similar highly processed fish products) for which the species of fish comprising the product or the harvesting event(s) or aquaculture operation(s) of the product cannot be feasibly identified are not subject to the requirements of this rule. *See* 50 CFR 300.324(a)(1). Therefore, HTS codes for such fish and fish products have not been included in the lists above. However, importers are advised to determine if other NMFS program requirements or other agency requirements (e.g., State Department, Food and Drug Administration) have ACE data reporting requirements applicable to HTS codes used for entry filing, whether or not those codes have been identified for the Seafood Traceability Program.

### **Stakeholder Engagement**

As part of NOAA's ongoing efforts to provide industry awareness of and support for compliance with the Seafood Traceability Program's traceability data reporting and recordkeeping requirements, NMFS will hold in-person and virtual public meetings to discuss the implementation of the U.S. Seafood Traceability Program and address questions from participants regarding all species covered by the Program, including shrimp and abalone. Meetings will address issues relevant to both foreign exporters and U.S. domestic importers of seafood species whose products are covered by the Seafood Traceability Program. Information on future Program implementation meetings and transcripts of prior meetings and webinars can be found at

*<http://www.iuufishing.noaa.gov/RecommendationsandActions/RECOMMENDATION1415/FinalRuleTraceability.aspx>.*



## **Classification**

The Assistant Administrator for Fisheries, NOAA (AA) has determined that this final action is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

The AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and an opportunity for public comment on this final action as they are unnecessary because the public already had such opportunity during the proposed rule stage of the Seafood Traceability Program rulemaking. At that time, the public had an opportunity to comment both on the Program's requirements and on delayed implementation of the Program for shrimp and abalone. In the preamble to the proposed rule, NMFS stated, "While it remains NMFS' full intention to include shrimp and abalone in the final rule, implementation of measures to address those gaps [in domestic reporting and recordkeeping requirements for aquaculture-raised shrimp and abalone] may affect the timing of implementation of the reporting and recordkeeping requirements for imports of shrimp and abalone. In particular, if gaps remain unaddressed by the time of publication of a final rule, NMFS intends to delay implementation of the rule for shrimp and abalone until such time as, working with its state and federal partners, it is able to determine that the gaps have been addressed and publishes a notice in the Federal Register specifying implementation of this rule for those species." *See* 81 FR at 6212.

In addition, this final rule does not change substantive requirements of the Seafood Traceability Program. Rather, as directed by statute (Consolidated Appropriations Act of 2018, Pub. L. 115-141), it lifts the stay for species (shrimp and

abalone) described in 50 CFR 300.324(a)(3) and provides a compliance date of December 31, 2018.

Later this year, NMFS will publish a proposed rule establishing reporting and recordkeeping requirements for domestic producers of aquaculture-raised shrimp and abalone, as directed by Congress in Section 539 of Title V of Division B of the Consolidated Appropriations Act of 2018. At that time, NMFS will provide the public with an opportunity to comment on that proposed rule.

*Executive Orders 12866 and 13771 and the Regulatory Flexibility Act*

This final rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

NMFS prepared a Regulatory Impact Review and Final Regulatory Flexibility Analysis (RIR/FRFA) for the Seafood Traceability Program which described the Program, its economic impact on small entities, and the legal basis for the action. The RIR/FRFA included an analysis of the economic impact of adding shrimp and abalone to the Program. Copies of the final RIR/FRFA are available from NMFS (see **ADDRESSES**).

*Paperwork Reduction Act*

This final rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). OMB had previously approved the information collection requirements for the Seafood Traceability Program under Control Number 0648-0739, but the burden estimates did not include the requirements for shrimp and abalone given the stay. The requirements for permitting,

reporting and recordkeeping for imports of shrimp and abalone will be submitted to OMB for approval. In a separate **Federal Register** notice, NMFS will solicit public comment on the information collection burden for the shrimp and abalone requirements under this rule.

Public comment will be sought regarding: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

#### **List of Subjects in 50 CFR Part 300**

Exports, Fisheries, Fishing, Fishing vessels, Illegal, Unreported or unregulated fishing, Foreign relations, Imports, International trade permits, Treaties.

Accordingly, 50 CFR part 300 is amended as follows:

#### **PART 300—INTERNATIONAL FISHERIES REGULATIONS**

1. The authority citation for part 300 continues to read as follows:

**Authority:** 16 U.S.C. 951 *et seq.*, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 5501 *et seq.*, 16 U.S.C. 2431 *et seq.*, 31 U.S.C. 9701 *et seq.*

**§ 300.324 [Amended]**

2. In § 300.324, the stay on paragraph (a)(3) is lifted.

Dated: April 19, 2018.

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Samuel D. Rauch, III,

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National Marine Fisheries Service.

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